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BY

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Whatever may be said in favor of having the general business of this country conducted by persons instead of corporations, as those who contend for a return to the methods of our forefathers sometimes advocate, the argument falls short of being applicable to life insurance companies. Their business can be conducted by corporations only.

A life insurance company to perform the function for which it contracts with every policy-holder must outlive all of its policy-holders. Its life must not be contingent upon any human life or group of human lives, for ultimately they must end. Being a corporation it may not possess a soul, but in a business sense it must be immortal. It must be made not only legally immortal, but it must be managed in a way to make certain that it will not fall a victim to any of the diseases which lead to corporate death.

The insuring public wants to know that the life insurance company with which it contracts not only can live but that it will live indefinitely. Life insurance contracts cannot be performed by corporations in process of dissolution. Bitter experience has taught us this.

In order to make certain of its own life, a life insurance corporation should grow and expand. The very law of its being is the law of average, and this cannot be brought into play except by achieving a fair size and covering a considerable area of territory.

Up to that point its business is speculative and its existence precarious.

The needs of the business and its relation to the nation were never stated in better form than by Judge Bradley of the United States Supreme Court when he said: "The business of insurance particularly can only be carried on with entire safety by scattering the risks over large areas of territory so as to secure the benefits of the most extended average. The needs of the country require that corporations—at least those of a commercial or financial character—should be able to transact business in different States." (Doyle *vs.* Continental Insurance Company, 94 U. S. 535.)

But unfortunately insurance corporations were not within the purview of the framers of our Federal Constitution, and failed to obtain the interstate rights so carefully secured to the individual citizen by that compact. Therefore, you and I as individuals are guaranteed the right to do what you and I as a corporation may not do. As individuals we would have the right to transact insurance business in any State of the nation, if the nature of the business made it practicable for us to do so. But as a corporation we may not enter States other than that in which we are domiciled except under whatever terms and conditions such foreign States may choose to impose. This right on the part of foreign States to set up barriers against the entry of insurance corporations has led to the imposition of many onerous conditions, not the least among which is excessively heavy taxation. To a consideration of this subject I am assigned upon your programme to-night.

Let me state at the outset that I shall not attempt to discuss it at length nor shall I speak of taxation by the several States of their domestic life insurance companies. What I shall say will be solely from the standpoint of foreign corporations, and, of course, all of the large life insurance companies are foreign to most of the States in which they do business.

By approximate uniformity of statutes, the tax imposed upon foreign life insurance companies by the several States and Territories is measured by premium receipts, either gross or after deduction of various items therefrom. There is but one exception to the rule and that is the exception afforded by the State of Massachusetts. Its tax is based upon reserves. I see no reason to criticise the use of premium receipts as the basis for measuring whatever tax the State

may deem it equitable to impose upon foreign life insurance companies, and since we have practical uniformity in this respect I would like to see Massachusetts follow the example of the only Chinaman who lived in a village in one of the Western States and who on leaving it was said to have "moved to make it unanimous."

Legislators have, I think, rather confused themselves by assuming that the tax imposed upon foreign insurance companies is a tax upon property simply because the language of the various statutes professed to say that the tax was imposed upon premium receipts. In every instance where the question has come before courts for their determinations, they have held that no matter what the words of the statute, the tax imposed on foreign insurance companies was merely a franchise tax and that the nominal imposition of it upon premium receipts was simply the use of those receipts as a measure of the tax.

It therefore seems to follow that being a franchise tax and not a property tax any convenient method of measuring it might be adopted. I cannot see why the amount of the net premium receipts within a State is not as fair a measure as any other.

Of course I would not dare to stand in this presence and criticise severely any law of the State of Massachusetts, for I recognize as clearly as you must that this State is and always has been a leader in the matter of fair and intelligent supervision and regulation of the life insurance business. Nor would I care to take the position of the man who said that you "can always tell a man from Boston, but you cannot tell him much." I say merely that Massachusetts stands alone in its method of taxing life insurance, and that in the interests of uniformity I would bring Massachusetts over to the position taken by some fifty other taxing jurisdictions rather than bring the fifty over to the position taken by Massachusetts. Strange as it may seen, I should regard it as being easier to do so.

I would have you understand that I complain of the franchise tax imposed by the States upon foreign life insurance companies largely because of the widely differing rates of the several States and the enormous total of the tax.

As you have been told repeatedly, the life insurance companies of this country contribute annually toward the expenses of the several State governments in which they do business an amount aggregating about $11,000,000. In some States the tax constitutes the largest

single item of the resources of the State. From the standpoint of the companies the item amounts to almost as much as the entire salary account of their home offices.

In view of the fact that life insurance consists merely of a distribution among the many of the financial loss caused by the death of the few, there would seem to be many reasons why it should not be taxed at all. As was said by Charles Sumner, many years ago, life insurance is itself a tax and is none the less so because it is self-imposed. It is not a business involving the creation of wealth with possible profit to those who supply the capital, but is merely a method of saving the helpless and dependent from possible want and penury.

But it must be admitted that the taxes imposed upon life insurance companies are very widely distributed among the people of the country, because of the number of policy-holders, and that perchance the bearing of this burden to a reasonable degree is necessary and as equitable as it would be to carry it in some other form. Furthermore, it is idle to protest when States have come to rely so largely upon life insurance policy-holders for the support of State governments. It is doubtless more practicable for us to discuss a method of improvement and a measure of partial relief that lies within the bounds of accomplishment.

Belief in this policy has led the Joint Committee representing the three associations of life insurance companies of the United States and Canada to recommend that States which have hitherto taken from policy-holders more than their fair share of tax money shall reduce their toll to at least the average rate taken by all States. The method they suggest brings into play an argument, the potency of which is impressive. They ask that we be permitted to deduct from our gross premium receipts of the year the returns we have made to citizens of the State during the year under our policy contracts. In other words, they ask for us the privilege of deducting from our gross receipts death losses and other payments made to policy-holders in order that the rate of taxation shall be applied to the remaining net receipts.

There are many reasons for asking for this privilege aside from the reasons which lead us to believe that taxation should be reduced. In the first place the States, without exception, are committed to the policy that the mere transaction of life insurance in its simplest form should not be taxed at all. No State imposes a franchise tax upon

the fraternal and assessment life insurance corporations whose business consists merely in collecting and distributing each year money enough to meet current death losses and the expenses of conducting the business.

Though all States recognized the unwisdom of taxing the insurance contract or transaction itself, they were led to do so by a desire to reach the large accumulations of funds necessarily incident to providing life insurance on the level premium plan. That these accumulations were represented by securities which were already taxed, was a fact not generally known. Furthermore, the taxation of these companies seemed to be encouraged by the belief that such companies were temporarily, at least, depleting the taxable wealth of the State from which premiums were being collected. In fact the same argument is being used to-day not only in justification of taxation, but as affording a reason why foreign life insurance companies should be required by statute to invest their reserve funds or a considerable portion of them within the State.

Without stopping here to point out some of the fallacies of this line of reasoning, nor the error of fact as to where such reserves are invested now, let me suggest that whatever may be said in favor of taxing the portion of the premiums which the law says must be set aside and held as a reserve fund, there is no reason why the portion of premium receipts which is returned to policy-holders at once should be subjected to taxation or should be included within the measure used to determine the amount of the tax. As to this portion, there is and can be no distinction between it and the funds collected and immediately distributed by fraternal insurance companies. This portion of the transaction at least constitutes in effect nothing but a transaction between citizens of the State.

In accordance with the basic principles of life insurance the many policy-holders who continue to live, pay to the representatives of the few who die the indemnity furnished by the insurance contract. As this transaction appears from the standpoint of the State we note first that there has been no withdrawal from the State of any of its taxable wealth. No profits have resulted to any one, but, on the contrary, there has been merely a wide distribution of an individual loss. From the economic standpoint the State is better off because of this distribution of loss, for in cases where it is lacking there is danger that the State itself may have to assume the burden

of caring for those who are left without means of support or ability to earn a living. For the State to burden the transaction with a tax is to discourage that which its own interests require it to give encouragement.

Should any one say that the method we favor might in some cases permit a life insurance company to escape taxation altogether I would reply that this can only occur if death losses and fulfilment of other policy contract obligations require the company to pay into the State within a given year more money than it is withdrawing from it as premium receipts. And I would ask why should not a company in this situation be exempted from taxation. I am sure that most States would grant exemption under such conditions very willingly. It is such a "balance of trade" that not only individual States but nations are trying to bring about. If it be true that the withdrawal and retention of the wealth of a State constitutes a menace to its welfare, it must be equally true that the extent of the menace is measured by net balances only. And if a balance against the State is a matter of grave concern, why should not a balance in favor of the State be a cause for congratulation and meet with an appropriate reward?